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Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-

ANNIE MARY VERSONS
Appellant

versus

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION and DANIEL R. McLEOD as Attorney General of the State of South Carolina
Respondents

ON APPEAL FROM THE SUPREME COURT OF SOUTH CAROLINA

MOTION TO DISMISS APPEAL

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

NO. 813

ANNIE MARY TIMMONS
Appellant

versus

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION and DANIEL R. McLEOD, as Attorney General of South Carolina
Respondents

ON APPEAL FROM THE SUPREME COURT OF SOUTH CAROLINA

MOTION TO DISMISS APPEAL

Respondents move to dismiss the appeal to the Supreme Court of the United States in the above-entitled matter on the grounds that (1) no federal question of substance is presented in the appeal and (2) the Opinion of the Supreme Court of South Carolina from which the appeal is taken disposed of all questions raised on non-federal grounds.

OPINION AND RECORD BELOW

The opinion of the Supreme Court of South Carolina is reported in full in Appellant's Appendix A.

In addition, Appellant has reproduced in her Appendix B certain letters and HUD regulations which were not intro-

duced in evidence in the injunctive proceedings or in the condemnation action and were not considered by the Court of Common Pleas for Richland County, South Carolina, or the Supreme Court of South Carolina in arriving at their opinions and judgment. The letters are in fact dated after the test proceedings in the state circuit court from which the appeal is taken had been concluded.

The only matttters which related to the HUD grants are set out in Respondents' Appendices 2 and 3 and Appellant's Appendix C.

JURISDICTION

Appellant has appealed solely from those parts of the South Carolina Supreme Court opinion upholding the validity of the proceedings and the constitutionality of the eminent domain statute. No federal questions were raised in the trial in the condemnation action as distinguished from the injunctive proceedings.

QUESTION PRESENTED

Respondents are not able, even in the light of Appellant's Statement and Reasons for Jurisdiction, to ascertain the federal question on which Appellant seeks to base her appeal.

In the record there was ample evidence of the public nature of the taking and the necessity for the taking; these are state questions in any event.

How the use of *federal* funds violates Appellant's "guaranteed constitutional rights" is not stated.

The fact that a mortgage covering the condemned property is held by a *federal* savings and loan association raises no federal question.

Appellant has propounded a compound question referring to federal funds and a mortgage of a federal association, but what federal right has been violated is not specified.

STATEMENT

South Carolina is celebrating its 300th anniversary in 1970; sites of historical significance in or near the State's three largest cities were selected for Tricentennial exposition.

The city block containing the historic Hampton-Preston mansion was designated by the South Carolina General Assembly as the Columbia exposition site. The three sites in Columbia, Charleston and Greenville are to become public parks after the Tricentennial celebration ends on June 30, 1971.

Six of the seven properties in the Columbia block were acquired by negotiation; the seventh owner, Annie Mary Timmons, refused an offer of $250,000 based on appraisals made by MAI appraisers. Miss Timmons demanded $2,500,000 for her property. The Housing and Urban Development Department (HUD), which was supplying participating federal funds for the purchase of the block under the Urban Open-Space Land program, approved the $250,000 figure as the basis for its matching grant.

Miss Timmons refused to negotiate for the purchase of her property except on her terms, and the institution of eminent domain proceedings became necessary in order to obtain the entire block which will be restored as a public garden park when the Tricentennial celebration is ended. The four-acre block was a formal garden when the large antebellum structure was occupied as a residence.

The power of eminent domain was given the Commission on May 13, 1969, and the condemnation action was filed on June 6, 1969, in the state court of general jurisdiction. Four days later Miss Timmons instituted separate injunctive proceedings in the same state court to test the validity of the condemnation action and the constitutionality of the eminent domain statute and procedure.

The opinion of the Supreme Court of South Carolina, adopting the circuit judge's order of September 19, 1969, sets out the status of the proceedings (Appellant's Appendix A, pages 3a-4a) and summarizes the testimony as

to public use, necessity and permanence. (Ibid, pages 4a-5a, 6a, 7a, 11a-12a). The Transcript of Record on the appeal to the South Carolina Supreme Court contains 67 pages of testimony relating to the public nature of the use, the necessity for the taking and the permanent public purpose to be served.

The issues in the suit which tested the validity of the proceedings were:

1. Necessity for the condemnation.
2. Permanence in the taking.
3. Public use of property.
4. Denial of due process and the equal protection of the laws.
5. Special legislation.
6. Defectiveness of the enactment.

The state circuit judge upheld the proceedings against all of these attacks and found the eminent domain statute and procedure constitutional. Appellant attempted delay at every stage of the proceedings, including an attempt a week before the scheduled trial date to remove the case to the federal courts. A Petition for a Writ of Certiorari on that aspect of the case was denied by this Court on October 12, 1970. (No. 518, October Term, 1970).

The jury trial, requested by Appellant, commenced on December 1 and consumed a full week. Appellant's buildings, which had been built as dormitories for a women's college 60 to 80 years ago, were inspected by the jury which found as just compensation for the taking the sum of $325,000, an award $75,000 higher than the HUD-approved figure for estimated compensation.

The state judge who presided over the trial denied Appellant's motion for a new trial on December 8. Judgment in accord with the jury's verdict was entered on December 12. An appeal was noted by Appellant's counsel, and a Transcript of Record which contained no testimony from the trial was agreed upon.

Both appeals—in the injunctive proceedings and in the condemnation action—were docketed with the Supreme

Court of South Carolina which directed that the two appeals be heard at its April, 1970, term. The opinion affirming the orders and judgment of the state trial court in both proceedings was issued on July 7, 1970. (Appellant's Appendix A.)

Petitions for rehearings were filed. The petition which related to the injunctive proceedings reiterated the grounds upon which that appeal had been based. In the other petition, signed by Appellant on her own behalf, Appellant stated *inter alia* that the provisions of the Housing and Urban Development Act and regulations thereunder must be complied with "in order to permit a taking", but there was no specification as to noncompliance. This position was novel at this point.

Both petitions were summarily denied on July 22, 1970, and Appellant noted her appeal to the Supreme Court of the United States on July 23, 1970. On August 10, 1970, Appellant applied to the Supreme Court of South Carolina for a stay of the proceedings; that application was denied on August 28. A motion for a stay dated September 4 was filed with the Supreme Court of United States; that motion was denied on September 24 by Chief Justice Burger.

On August 27, 1970, the state circuit judge issued an order vesting title to Appellant's land in The Tricentennial Commission and directing Appellant to surrender possession of the lands. The amount of the award, $325,000, was deposited in Court.

The Jurisdictional Statement dated October 7, 1970, has been filed with the Supreme Court of the United States, and Appellant also moved for reconsideration of her motion for a Stay. That was denied on October 19, 1970.

REASONS FOR DISMISSING THE APPEAL

Although Appellant's Jurisdictional Statement contains 15 references to United States Treasury or HUD funds, Appellant has not stated any federal question raised with reference to the use of these funds.

Appellant says that the use is "not authorized by the

United States Housing and Urban Development Act of 1965, as amended", but the use as a public park is specifically authorized by the Act in accordance with the contract set out in Appellant's Appendix C.

Funds appropriated in accord with the Open-Space Land, Urban Beautification, and Historic Preservation Act (42 U. S. C. 1500 et seq.) are involved in the acquisition of these lands, but no exceptions were made in the test case, at the hearing or on appeal in reference to these funds.

The Act provides for grants up to 50% of the cost of acquisition. The term "open-space uses" is defined in the Act as "use of open-space land for (a) park and recreational purposes, (b) conservation of land and other natural resources, or (c) historic or scenic purposes." The Act provides that lands acquired with such grants cannot be converted to other uses without the approval of the HUD Secretary, 42 U.S.C. 1500c. The contract with HUD employed the same language as the Act with reference to the use of the land. (Appendix C)

Appellant states that these lands "no doubt would be converted to other uses and purposes, not authorized by law and in violation of the Housing Act, supra, and regulations", but this conjecture on Appellant's part is in the face of the Open-Space Land Act, the contract for the grant of the HUD funds and the South Carolina statute which is complimentary to the HUD statute by providing that land acquired with HUD funds under the Open-Space Land Act "shall be turned over [by the Tricentennial Commission] to the State or such other governmental entity as the General Assembly may direct, to be preserved and used for park purposes." (See Defendant's Exhibit C, Respondents' Appendix 3, and Defendant's Exhibit D, Appellant's Appendix C.)

Appellant persists in the position that the HUD Act, regulations and contract have not been complied with; while that is not in issue on this appeal and was not passed on by the state circuit court or the state supreme court, the Tricentennial Commission has in fact complied with all

requirements for negotiation for purchase and as to notice for surrender of possession.

Appellant refers to the HUD regulation and states that Judge Grimball's order of August 27, 1970, is "invalid and in noncompliance with the contract and regulations between HUD and the respondent."

This order was issued 50 days after the order from which the appeal to this court was taken was issued by the Supreme Court of South Carolina and more than a year after the hearing on the validity of the condemnation proceedings and the constitutionality of the eminent domain statute had been concluded.

Had the Appellant availed herself of the opportunity to appear before Judge Grimball on August 21, 1970, she would have heard proof of the 90-day notice which is in that record, but that is not an issue on this appeal because it was not involved in the proceedings on which this appeal is based and could not have been considered by the Supreme Court of South Carolina in the decision from which this Appeal has been taken.

The letters and HUD regulations reprinted in Appellant's Appendix B are not contained in the record forwarded by the Clerk of the Supreme Court of South Carolina. They were not introduced in either record and were not considered by the State circuit court or the Supreme Court of South Carolina on the appeals.

The only testimony and exhibits introduced in the record in regard to HUD funds related to the fact that the use of these funds required that the lands so acquired be used for open-space park purposes. (See Appendices C, 2 and 3).

As we construe Appellant's Jurisdictional Statement, any questions relating to the trial, the amount of the award and the admission of evidence have been abandoned. Appellant refers to her property as being worth $2,000,000, $2,500,000 and $3,000,000 and describes her buildings as "brick mansions" and as "valuable". Respondent's MAI appraisers ascribed no value to the improvements, and her own appraiser gave the structures a salvage value in adapting

the building for other uses. No appeal was taken from the amount of the award.

The appeal in the condemnation action was concerned with four questions, none of which is involved on this appeal:

(1) Continuance of the case;
(2) & (3) Admissions of evidence, and
(4) Denial of due process.

The first three questions were held to be matters properly within the discretion of the trial judge, and the South Carolina Supreme Court found nothing to show that that discretion has been abused. On the issue of due process the South Carolina court disposed of a contention that notice was required for an order setting a trial date and then stated:

> In a condemnation case the issues are simple. The court is in quest of the reasonable fair market value of the property taken. There is nothing in the transcript before us to convince us that ample opportunity to explore that issue was not afforded the landowner.

This is the only possible federal question raised in the condemnation proceeding and the repeated and restated proposition that Appellant has been denied due process of law will not raise a federal question where there is no specification as to the nature of the question.

Appellant avers that she has been "denied due process of law" and that "there has been no complete and fair trial by due process of law, no determination of the issues —" She says that she has been denied "the opportunity to be heard" and she conjectures that her properties "no doubt would be converted to other uses and purposes, not authorized by law—" She describes the taking as being "without due process and just and reasonable compensation for a temporary state purpose and other diverted uses—"

All legal rights and constitutional privileges have been accorded Appellant, and she has not cited a single instance in which she has been denied a hearing. All issues have been determined against Appellant in the proceedings

in the South Carolina courts; and the statute granting the power of eminent domain is in no wise defective.

Questions relating to necessity, the public nature of the taking and the permanent status of the condemnation are all matters which were decided by the state circuit court and the state supreme court under state law.

Appellant claims that her lands are being taken "for supposedly public parking, or diverted uses", "for temporary use, nonpublic uses and without reasonable necessity", "for temporary public parking or otherwise" and "for a temporary state purpose and other diverted uses."

The permanent nature of the taking was considered by the state courts. The acquisition of the lands with participating HUD funds does not change the nature or character of the taking and the fact a federal grant is involved does not *ipso facto* raise federal questions.

The basis upon which jurisdiction is claimed by Appellant is contained in 28 USC 1257 (2) which says that decisions of the highest state court may be reviewed by the United States Supreme Court:

> (2) by appeal, where is drawn in question the validity of a statute of any state on the grounds of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

The only state statutes involved in these proceedings are (1) the statute giving the Tricentennial Commission the power of eminent domain (Appendix 3) and (2) The Public Works Eminent Domain Law, which is the procedure prescribed for eminent domain proceedings brought by the Tricentennial Commission. 25-101-25-140 S. C. Code 1962.

The Eminent Domain statute and the procedural act were both upheld by the state circuit court, and that opinion has been upheld by the highest state court.

Justice Holmes made this off-quoted observation in *Madisonville Traction Co. v. St. Bernard Mining Co.*, 196 U. S. 239, 257, 49 L. ed 462, 470, 25 S. Ct. 251:

> The fundamental fact is that eminent domain is a

prerogative of the State, which on the one hand may be exercised in any way that the State thinks fit, and on the other may not be exercised except by an authority which the State confers.

In *Louisiana Power v. City of Thibodaux*, 79 S. Ct. 1070, 360 U. S. 25, 3 L. ed 1058, this Court held that the question of the power of a city to condemn under a state statute should be resolved by the highest state court. The validity of the proceedings are to be determined by the applicable state law, and the federal courts will apply state law even in those cases removed to the federal courts under the diversity statute.

Even if the highest state court decides questions of state law erroneously (which is certainly not conceded), that does not confer jurisdiction on the Supreme Court of the United States. *Brinkeroff-Faris Trust & Savings Co. v. Hill*, 50 S. Ct. 451, 281 U. S. 673, 74 L. ed 1107. The statute must be repugnant to the United States Constitution, and the right to interpret state statutes is a function of the state courts. *Cramp v. Board of Public Instruction of Orange County, Florida*, 82 S. Ct. 275, 368 U. S. 278, 7 L. ed 2d 285.

The federal right which has been violated has not been cited, and the state certainly has the right to give its power of eminent domain "in any way that the State thinks fit."

The same arguments propounded in the Jurisdictional Statement have been set out to a considerable extent in a Petition for a Writ of Certiorari to the Fourth Circuit Court of Appeals (No. 518, October Term, 1970). That proceeding involved the sole question of the removal of the condemnation action to the federal courts, and these arguments have no more relevancy there than they do here.

The same matters were also presented in the motions for stay before the South Carolina Supreme Court and before this Court, which have been denied in both instances.

The Jurisdictional Statement of Appellant does not accord with the records in this matter; Appellant's present counsel was not involved in either of the proceedings

below or on the appeals to the State Supreme Court. Counsel for the Tricentennial Commission has not been able to determine the federal question which Appellant seeks to raise. Certainly nothing has been cited to show the nature of any federal question raised during the trial stage of the proceedings or on appeal, and the decision of the Supreme Court of South Carolina does not show where any federal right or protection has been denied Appellant.

The reasons for granting jurisdiction are, to borrow a phrase from Macbeth, "full of sound and fury, signifying nothing." Respondents have commented more than is probably necessary, but the Jurisdictional Statement was not intended to clarify and specify any issues; it was designed to confound and confuse.

The opinion from which an appeal to this Court is taken must set out the federal issue which is to be considered. But Appellant has ignored the opinion of the South Carolina Supreme Court as if it did not exist and has ventured into issues which have never been presented and in fact do not exist.

Throughout this proceeding Appellant has contended that the State did not have the power to take her lands; on this appeal she contends that she was not personally served, even though the state circuit judge found on the basis of testimony before him that service had been effected, and Appellant's statement avers that "There is diversity of citizenship" which is not a fact and which has no possible relevancy on this appeal.

Appellant concludes the Jurisdictional Statement with the assertion that "Respondent cites not one single case in point . . ."

Appellant has cited no cases "in point", and in all candor Respondents submit that Appellant has not set out any point which affords a basis for an appeal to the Supreme Court of the United States.

The only case which needs to be considered in this matter is the opinion of the Supreme Court of South Carolina issued on July 7, 1970; it disposes of all issues and raises no

issue for consideration on appeal to this Court.

Appellant has been accorded every constitutional right and guarantee to which she is entitled, and there are no federal questions for consideration by the Court on appeal.

CONCLUSION

No reason for granting jurisdiction in this appeal has been advanced by Appellant. No federal question of substance has been raised at any point in the proceedings.

From the outset Appellant has made it clear that she did not want to part with her property which she regarded as having a value many times higher than any appraisal on the same.

The appeal should be summarily dismissed since there is no basis for jurisdiction by the Supreme Court of the United States, all issues in the two proceedings having been determined by the South Carolina courts on non-federal grounds.

Respectfully submitted,

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